

REMARKS

Claims 1-20 are pending. In the Office Action, claims 1-13 and 17-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dempsey (European Patent Application No. 452, 529 A1) in view of Nussbaumer (U.S. Patent No. 4,768,897) or Friedrich (U.S. Patent No. 4,444,815) and further in view of Motz et al (U.S. Patent No. 6,029,397, hereinafter referred to as "Motz"); and claims 14-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dempsey in view of Nussbaumer.

An Affidavit under 37 C.F.R. 1.132 was submitted in an earlier response to support the patentability of the artificial turf system of Applicant's claims. The Affidavit addresses, among other things, the superior and unexpected results of the invention, the subsequent copying of the invention by others, the long felt need of the invention, the reasons that others did not make the invention, etc. The Affidavit provides support for many of the following reasons for traversal of the above noted rejections.

In addition, the Examiner refutes Applicant's contention that no appropriate suggestion exists for combining cited references. As the Examiner has only offered different teachings from the prior art, without more, as a motivation for combining such references. Applicant respectfully submits that this is not motivation to combine at all. For at least this reason, such references fail to support the below 103 rejection and as stated below, the rejection should be withdrawn if for this reason only.

Applicant respectfully traverses the §103(a) rejection of claims 1-13 and 17-20 as being unpatentable over Dempsey in view of Nussbaumer or Friedrich and further in view of Motz.

Among other things, Dempsey fails to teach, suggest, or otherwise disclose the turf assembly as claimed by Applicant. For example, in the Office Action, the single shock

absorbing layer 20 of Dempsey is referred to in an attempt to show at least the filtering layer and the drainage layer of Applicant's claims. Nowhere does Dempsey describe the turf assembly of Applicant's claims. In fact, the Office Action concedes that Dempsey fails to "specifically mention a filtering layer" at all (see OA, pg. 3). The Nussbaumer and Friedrich references are cited in an attempt to show that filtering layers are well known in artificial turf coverings; however, Applicant respectfully submits that, among other things, the turf assembly of Applicant's claims is not evident from the cited references. For at least this reason, Applicant urges the Examiner to withdraw the §103(a) rejection of independent claims 1 and 17 and the rejection of dependent claims 2-13 and 18-20 as these claims add further limitations to otherwise allowable claims.

In addition, Applicant wishes to emphasize that no appropriate suggestion exists for combining the cited references. The showing of a suggestion, teaching, or motivation to combine prior teachings "must be clear and particular Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'." *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination. The only suggestion offered for the particular claimed combination is Dempsey's language that "the shock absorbing layer 20 may be comprised of an open celled material through which water may drain directly" (Dempsey col 3, lines 50-53). Thus, the §103 rejection of independent claims 1 and 17 should be withdrawn if for this reason only.

Applicant respectfully traverses the §103(a) rejection of claims 14-16 as being unpatentable over Dempsey in view of Nussbaumer.

Applicant's again assert that Dempsey fails to teach, disclose, or otherwise suggest the turf assembly of Applicant's claims. Specifically, Dempsey fails, among other things, to show "a filtering layer disposed upon [a] drainage layer to prevent passage of undesirable particles in the fluid into the drainage layer" as recited in independent claim 14.

Also, as stated above, Applicant believes that no appropriate suggestion has been offered to support the proposed combination. The vague motivation of "the shock absorbing layer 20 may be comprised of an open celled material through which water may drain directly" is insufficient to support a proper suggestion to support 35 U.S.C. § 103 rejection. The only suggestion for such a motivation is provided in the Applicants' disclosure. The Examiner's apparent use of the Applicants disclosure for a finding of obviousness is improper hindsight reconstruction.

For at least the above reasons, Applicant respectfully urges the Examiner to withdraw the §103(a) rejection of independent 14 and to withdraw the rejection of the accompanying dependent claims 15 and 16, among other reasons, as these claims add further limitations to an otherwise allowable base claim.

CONCLUSION

In view of the foregoing remarks and for various other reasons, Applicant submits that claims 1-20 are allowable, and a Notice of Allowance is courteously solicited. If any impediment to the allowance of these claims remains after entry of this Request for Reconsideration and such impediment could be alleviated during a telephone interview, the Examiner is invited to telephone the undersigned so that such issues may be resolved as expeditiously as possible.

No fees are believed to be due at this time. Should any fees be necessary for any reason relating to this response, the Commissioner is hereby authorized to deduct said fees from Akin Gump Strauss Hauer & Feld LLP Deposit Account No. 01-0660.

Respectfully submitted,

Date: May 12, 2003

By: 

Russell C. Scott, Reg. No. 43,103
Customer No. 020790
ATTORNEY FOR APPLICANT

AKIN GUMP STRAUSS HAUER & FELD LLP
300 West 6th Street
Suite 2100
Austin, Texas 78701
Telephone: (512) 499-6200
Facsimile: (512) 499-6290

ATTACHMENT A

1. (Original) An artificial turf system comprising:

a base that is readily constructed, at least in part, from naturally occurring ground elements that are present upon initiation of the construction of the base, the base being

5 constructed to include a drainage mechanism that is disposed near the surface of the base;
and

a turf assembly that is laid out upon the base and that is constructed to pass fluid therethrough such that the fluid is specifically directed to the drainage mechanism of the base as it moves through the turf assembly, the turf assembly comprising a plurality of

10 layers including:

an impermeable moisture barrier layer that is laid upon the base such that the fluid may only pass to the base at predetermined locations that correspond to the drainage mechanism;

a drainage layer disposed upon the impermeable moisture barrier layer that
15 creates an area where fluid is free to pass to the impermeable moisture barrier layer and ultimately to the drainage mechanism of the base;

a filtering layer disposed upon the drainage layer that filters out undesirable particles from the fluid as the fluid passes through the filtering layer and into the drainage layer, the area between the filtering layer and the impermeable moisture barrier layer
20 being permanently available whether or not fluid is passing therethrough; and

a turf mat disposed upon the filtering layer having grass on an upper surface to give the artificial turf system the appearance of a completely natural grass field.

2. (Original) The artificial turf system of claim 1 wherein the grass comprises synthetic material that has been formed to appear like natural grass.

3. (Original) The artificial turf system of claim 1 wherein the grass comprises a mixture of natural and synthetic material to form a layer that appears like a completely
5 natural grass surface.

4. (Original) The artificial turf system of claim 1 wherein the drainage layer comprises a plastic layer having evenly distributed protrusions of the same height.

5. (Original) The artificial turf system of claim 1 wherein the drainage layer comprises a spring-like distribution of elongate plastic material.

10 6. (Original) The artificial turf system of claim 1 wherein the filtering layer is a woven geotextile.

7. (Original) The artificial turf system of claim 1 wherein the filtering layer is a non-woven geotextile.

8. (Original) The artificial turf system of claim 1 wherein the impermeable
15 moisture barrier layer, the filtering layer, and the drainage layer are positioned separately.

9. (Original) The artificial turf system of claim 1 wherein the impermeable moisture barrier layer, the filtering layer, and the drainage layer are a single unit.

10. (Original) The artificial turf system of claim 1 wherein the base comprises natural soil.

20 11. (Original) The artificial turf system of claim 10 wherein the base further comprises at least one of a plurality of stabilizing agents.

12. (Original) The artificial turf system of claim 11 wherein the stabilizing agent is selected from the group consisting of lime, fly ash, stone, and enzyme.

13. (Original) The artificial turf system of claim 1 wherein the turf assembly and base combination is substantially flat in order to provide a playing surface for a plurality of sporting activities.

14. (Original) A method for assembling a pre-engineered synthetic turf system
5 comprising:

forming a base having a drainage system built in for draining fluids away from the pre-engineered synthetic turf system; and

laying out a turf assembly upon the base such that fluids contacting the turf assembly pass into the drainage system of the base through various layers of the turf
10 assembly, the various layers of the turf assembly including:

an impermeable moisture barrier layer disposed upon the base such that fluid passing through the turf assembly reaches the base in certain predetermined areas only;

a drainage layer disposed upon the moisture barrier layer that provides an
15 open space for passage of fluid, the open space remaining open even when fluid is not passing therethrough;

a filtering layer disposed upon the drainage layer to prevent passage of undesirable particles in the fluid into the drainage layer; and

an artificial turf layer having grass on an upper surface, the grass providing
20 the turf assembly with an appearance of a completely natural playing field, the drainage layer providing support for the artificial turf layer such that the turf assembly has the feel of a completely natural playing field.

15. (Original) The method of claim 14 wherein the impermeable moisture barrier layer, the drainage layer, and the filtering layer are combined into a single unit that may be rolled out as a single layer.

16. (Original) The method of claim 15 wherein said laying out the turf assembly
5 comprises:

rolling the single unit onto the base such that the base is completely covered with the single unit and fluid may flow to the base only through specific predetermined locations in the turf assembly; and

rolling the artificial turf layer onto the single unit so that a field is formed that
10 appears similar to a natural grass surface.

17. (Original) A pre-engineered synthetic turf system comprising:

a base having a drainage system built in for draining fluids away from the pre-engineered synthetic turf system; and

a turf assembly disposed upon the base such that fluids contacting the turf
15 assembly pass into the drainage system of the base through various layers of the turf assembly, the various layers of the turf assembly including:

an impermeable moisture barrier layer disposed upon the base such that fluid passing through the turf assembly reaches the base in certain predetermined areas only;

20 a drainage layer disposed upon the impermeable moisture barrier layer that provides an open space for passage of fluid, the open space remaining open even when fluid is not passing therethrough;

a filtering layer disposed upon the drainage layer to prevent passage of undesirable particles in the fluid into the drainage layer; and

an artificial turf layer having grass on an upper surface, the grass providing the turf assembly with an appearance of a completely natural playing field, the drainage
5 layer providing support for the artificial turf layer such that the turf assembly has the feel of a completely natural playing field.

18. (Original) The pre-engineered synthetic turf system of claim 17 wherein the base is formed as a smooth surface with a slightly curved cross section.

19. (Original) The pre-engineered synthetic turf system of claim 17 wherein the
10 drainage layer comprises a solid plastic material that is shaped as a plurality of evenly distributed protrusions, each of the plurality of protrusions being of the same height.

20. (Original) The pre-engineered synthetic turf system of claim 17 wherein the drainage layer comprises a conglomeration of elongate plastic material that is distributed across the drainage layer such that the elongate plastic material provides the drainage
15 layer with a uniform height across the pre-engineered synthetic turf system.